IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.3845 of 1985

Shri Dnyanu Maruti Mule,
since deceased through his heirs
and LRs
(A) Shri Atmaram Dnyanu Mule & ors. Petitioners

Vs.

Shri Ganpati Maruti Pawar,
since deceased through his heirs
and LRs
(1) Shri Mohan Ganpati Pawar & ors. Respondents

Ms.Suhasini Mutalik for petitioners.
Mr.C.G.Gavnekar for Resp.Nos.1 and 4.

CORAM: B.H.MARLAPALLE,J.

June 07, 2006.

ORAL JUDGMENT:

1. In this petition filed under Article 227 of the Constitution the petitioner-landlord has brought in question the judgment and order dated 22/1/1985 rendered by the learned Member of the Maharashtra Revenue Tribunal in Tenancy Revision Application No.94 of 1982. This case has a chequered history which requires to be noted as under:

. Tenancy Case No.14 of 1969 was registered on an application by the landlord under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Act") before the Tenancy Aval Karkun, Karad in respect of the suit land i.e. agricultural

land admeasuring 37 Ares located in Survey No.307/1-A of village Shere in Karad taluka of Satara District. It was contended by the landlord before the Tenancy Aval Karkun that he had obtained certificate under Section 88-C of the Act and applied to the Mamlatdar's Court on 22nd June 1962 for restoration of land for personal cultivation under Section 33-B of the Act. In the said proceedings the Aval Karkun found that there was no application at all on record as claimed by the landlord and the landlord reconstructed the record and the application under Section 33-B was dealt with afresh. Two main issues were involved in deciding the said application viz. (a) that the landlord had given a notice to the tenant in writing before filing of the application under Section 33-B and (b) the application was filed within the prescribed time. As both these requirements were not satisfied the Tenancy Aval Karkun turned down the claim of the landlord on 30/1/1970 by holding that the landlord had failed to prove that he had issued a valid notice to the tenant and filed the application within the prescribed time. The landlord challenged the said order before the Deputy Colelctor (Tenancy Appeals), Satara in Tenancy Appeal No.114 of 1970 (Original Appeal No.65/70).

The said appeal was dismissed by the Special Deputy Collector on 31/5/1971. The landlord preferred Revision Application No.324 of 1972 before the Maharashtra Revenue Tribunal and the same was allowed on 28/3/1973. This order of the MRT came to be challenged in Special Civil Application No.2664 of 1973 instituted before this Court under Article 227 of the Constitution of India and the said petition was allowed on 28/2/1978. This Court held that the MRT's order impugned was unsustainable and the order passed by the Special Deputy Collector for remand and as confirmed by the MRT was grossly erroneous.

2. By setting aside both the orders i.e. order passed in Tenancy Application No.324/1972 and Tenancy Appeal No.114/1970, the Tenancy Appeal was restored before the Special Deputy Collector with a further direction to him to hear and dispose of the same as a final Court of facts by considering all the oral and documentary evidence which was on record. The SDO, Satara Division, Satara allowed the appeal by judgment and order dated 30/11/1981 on remand and set aside the order passed by the Tenancy Aval Karkun on 30/1/1970 in Tenancy Case No.14 of 1969 and further held that the landlord is entitled for possession of

the suit land under Section 33-B read with Section 29 of the Act. As noted earlier the tenant's revision application registered as Tenancy Application No.94 of 1982 has been allowed by the MRT by the impugned order. The MRT also set aside the order dated 30/11/1982 passed in Tenancy Appeal No.114/1970. Thus the order passed by the Tenancy Aval Karkun on 30/11/1970 in Tenancy Case No.14 of 1969 came to be confirmed i.e. the application filed by the landlord under Section 33-B was dismissed. The SDO in Tenancy Appeal No.114 of 1970 on remand framed the following two points for consideration:

(1) Whether the landlord had given a notice to the tenant before filing the 33-B application.

(2) Whether the application filed by the landlord was within the prescribed time limit.

Though both the points were answered in the affirmative i.e. in favour of the appellant-landlord, the SDO noted that the notice dated 22/6/1962 claimed to have been served on the tenant was not traceable in the office record and service of the notice to the tenant before filing of

the application as well as filing of the application within the prescribed time limit was mandatory. The SDO relied upon the reconstructed file and accepted that the notice was served on 22/6/1962 on the tenant by relying upon the proceedings under Section 32-G and more particularly the order dated 16/2/1966. The SDO also referred to the letter dated 14/8/1968 written by the Special Tahsildar and the DO written by the RDC to the Special Tahsildar. It was also noted that when the case papers in 88-C proceedings were shown to the tenant he had admitted the service of the notice under 88-C. The SDO further noted that the tenant had taken a negative stand in his depositions and that the landlord obtained 88-C certificate, approached various authorities to expedite his case, his depositions in 32-G proceedings clearly proved that he wanted the possession of the suit land for his personal cultivation.

3. This approach of the SDO has been decried in the impugned decision of the MRT which noted that there was absolutely no evidence in support of the contentions that the landlord had filed an application on 22/6/1962. Even though the file was

reconstructed, it was necessary for the SDO to ensure that the application was in fact registered and this could be verified by calling upon the applicant-landlord to produce the registration receipt. The register from the Mamlatdar's office was not called by the SDO and, therefore, the presumption drawn by the SDO that an application was filed by the landlord had no documentary support. In addition it was necessary for the landlord to prove that the statutory notice was given to the tenant before the application was filed under Section 33-B of the Act on the basis of the so called exemption certificate dated 1/6/1962. It was contended by the landlord that the copy of the exemption certificate as well as the receipt of notice were not annexed to the application submitted on 22/6/1962. Again there was no proof for the same. The notice allegedly issued to the tenant must bear the date and its service on the tenant ought to be within the limited period from 1/6/1962 to 22/6/1962 i.e. after the exemption certificate was obtained and before the application under Section 33-B was purportedly submitted before the Aval Karkun. This could not be proved by the landlord. The landlord then relied on the notice dated 19/12/1956 and the MRT noted that it

was of no consequence. The MRT further held that the grounds given by the SDO in setting aside the order passed by the Tenancy Aval Karkun were flimsy and were not based on any legal inferences. The SDO was thus influenced by the depositions of the landlord recorded on 12/9/1979 and the MRT rightly held that it was necessary for the SDO to examine the evidence in support of these depositions.

4. There is one more aspect which the MRT considered. The original landlord was no more and his LRs had come on record. The application purportedly submitted in the year 1962 was by the original landlord who could only claim the grounds available to him. The LRs could not rely upon the said application submitted in 1962 or in 1969 as the case may be more so when the claims submitted under Section 33-B of the Act are of personal nature. It was, therefore, necessary for the LRs to make out an independent case for the restoration of the suit land in their favour and there was no effort in that regard.

5. The reasoning set out by the Tribunal in support of the impugned order thus does not suffer

from any errors apparent on the face of the record and, therefore, the said order does not call for any interference in a petition under Article 227 of the Constitution.

6. In the result, the petition fails and the same is hereby dismissed. Rule discharged. Interim order if any stands vacated. No order as to costs.

(B.H.MARLAPALLE,J.)